

Application No. 09/535,067

REMARKS

These remarks are responsive to an Office Action of July 2, 2003. Claims 12, 13, 15-23 and 25-28 are pending upon entry of this amendment in the present application.

First, the Applicant would like to thank Examiner Tran for extending the courtesy of an interview on October 29, 2003 to discuss the above identified application and the reconsideration of the pending claims thereof. The Applicant acknowledges the content of the interview summary (Form PTOL-413) prepared by the Examiner, dated October 29, 2003. Furthermore, the following remarks include the issues addressed by the Applicant in the interview and may be considered a summary of the interview as well as a reply to the office action.

The Examiner has rejected claims 12, 13 and 15-26 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention at the time the application was filed. Furthermore, the Examiner has rejected claims 12, 13, and 15-26 under 35 U.S.C. § 103(a) as being unpatentable over de Bruijne et al. (U.S. Patent No. 5,194,273) in view of a recipe on cranberry pizza and Paulucci (U.S. Patent No. 4,842,882). In response, Applicant respectfully traverses the above-mentioned rejections and requests reconsideration by the Examiner in view of the following remarks.

As previously mentioned, the Examiner has rejected claims 12, 13 and 15-26 under 35 U.S.C. § 112, paragraph 1. In general, the Examiner asserts that the phrase "a plurality of margarine layers distributed between the layers of dough" found in independent claims 12 and 17, and the phrase "a plurality of margarine layers distributed between and substantially separating said dough layers before baking" found in independent claim 24 are not supported by the original disclosure. More specifically, Examiner has stated the specification does not

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disclose a plurality of margarine layers between dough layers and that the specification discloses only that the dough sheet will have a total of 16 layers.

It is well established that to sustain a written description rejection under 35 U.S.C. §112, paragraph 1, Examiner has the burden to show a prima facie case of lack of written description. MPEP § 2163.04. The inquiry into whether the description requirement is met is a question of fact and must be determined on a case-by-case basis. In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A written description is presumed adequate, and the burden is on the examiner to show otherwise. In re Marzocchi, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971).

The standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." In re Gosteli, 872 F.2d 1008, 1012, 10 USPQ2d 1111, 1117 (Fed. Cir. 1991); MPEP § 2163.02. Therefore, the examiner has the initial burden of presenting why a person skilled in the art would not recognize in applicant's disclosure a description of the invention as defined by the claims. Wertheim, 541 F.2d at 263, 191 USPQ at 97; MPEP § 2163.04. If the examiner makes a prima facie case of insufficient written description, the applicant may respond by showing each claim limitation is expressly, implicitly, or inherently supported in the originally filed disclosure. MPEP § 2162.II.A.3.b.

Examiner has not made out a prima facie case of insufficient written description. There is proper express, implicit, or inherent support for the limitations quoted above in the application as filed. For example, under the heading "Detailed Description of the Invention and the Presently Preferred Embodiment," Applicant discloses the following:

In accordance with the present invention, the method for making the laminated pizza crust is shown generally in Figure 1. After ingredients for the

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dough are mixed (10-11), the dough is allowed to rest a period of time (12). After this resting period, a sheeting and laminating process (13) is performed on the rested dough to produce a layered sheet of dough and fat. When the laminated dough is of the proper thickness and comprises the desired number of layers, the dough is 'docked' or punctured with holes to prevent ballooning of the dough. Specification at page 4, line 32- page 5, line 5.

The preceding quotation provides express support adequate for a person reasonably skilled in the art to know that Applicant was in possession of the invention as defined by the claims at the time of filing. The description calls for a sheeting and lamination process, which produces a layered sheet of dough and fat, to occur until the dough "comprises the desired number of layers." The claims define the fat as margarine. A person reasonably skilled in the relevant art would conclude that an applicant teaching dough with a desired number of layers was in possession of dough with a plurality of layers.

Additionally, one reasonably skilled in the art would recognize that "layers" meant layers of margarine and dough. The specification generally describes dough produced by stretching dough, laminating it with margarine, piling the laminated dough to form layers, and repeating the stretching and piling steps. See Figure 3. It is inherent within this description that the layers are comprised of dough and margarine, because the process described could only produce such a laminated product.

Furthermore, the desired number of layers is not limited to a total of 16 layers. The discussion of 16 layers on page 8 and elsewhere in the application is a description of one of many embodiments of the invention. The specification itself dictates this interpretation. For example, Applicant gives instructions for determining the

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total number of layers the dough will have. These instructions conclude "[f]or example, if 4 layers are run after the first piler and 4 layers are run after the second piler, the dough sheet will have a total of 16 layers." Specification at page 8, lines 19-25. Providing instructions for calculating the total number of layers a dough sheet will have after processing is inconsistent with disclosing a laminated dough sheet requiring 16 layers of dough.

Therefore, as explained above, a person reasonably skilled in the art would recognize the inventor was in possession of a laminated crust dough comprising "a plurality of margarine layers distributed between the layers of dough" as claimed in independent claim 12 and original claim 17, "a plurality of margarine layers distributed between and substantially separating said dough layers before baking" as claimed in independent claim 24 and "a plurality of layers including margarine distributed between layers of proofed dough" as claimed in amended claim 17 and new independent claim 27. Hence, adequate written description of the invention as defined by the claims exists in this application.

In addition, as previously mentioned Examiner has rejected claims 12, 13 and 15-26 under 35 U.S.C. §103(a) as being unpatentable over de Bruijne et al. (U.S. Patent No. 5,194,273) in view of a recipe on cranberry pizza and Paulucci (U.S. Patent No. 4,842,882).

The Examiner bears the initial burden in establishing a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103. In re Piasecki, 745 F.2d 1468, 223 USPQ 758 (Fed. Cir. 1985); In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness.

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To properly establish a prima facie case of obviousness, MPEP § 706.02(j) identifies three basic criteria that must be met. First, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. Prior art under 35 U.S.C. §103 is the same as prior art under 35 U.S.C. §102. MPEP § 2141.01. Therefore, if a document cannot be cited as prior art under 35 U.S.C. §102, it cannot be relied on to show obviousness under 35 U.S.C. §103. Second, there must be some suggestion or motivation in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine reference teachings. Finally, there must be a reasonable expectation of success. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The recipe for cranberry pizza cannot be properly used in an obvious rejection. The publication date of the recipe as shown on page 1 is 1996. The priority date for the present application is June 30, 1995. Therefore, the publication date of the recipe is after the priority date of the present application and hence may not be used as prior art under 35 U.S.C. §§102 or 103.

The de Bruijne et al. and Paulucci references do not render the present invention obvious. A prima facie case of obviousness concerning the present application has not been established since the references cited by the Examiner do not suggest a motivation to combine. Neither the de Bruijne et al. reference nor the Paulucci reference discloses a docked laminated crust dough or laminated crust that includes a plurality of proofed dough layers, a plurality of margarine layers distributed between and a plurality of puncture openings positioned on the laminated crust dough or laminated crust. Therefore, there must be some suggestion or motivation found in the prior art to combine the features of de Bruijne et al. with the features of Paulucci.

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No such suggestion or motivation exists. For example, de Bruijne et al. does not suggest docking the laminated dough sheets. In fact, the de Bruijne et al. reference would appear to teach away from combining its features with features like those found in Paulucci. The puffed pastry, danish or croissant products disclosed or suggested in de Bruijne et al. pursue optimization of the lift of the puffed pastry, danish or croissant during baking and require growth due to the formation of vapour bubbles formed during the baking operation. See de Bruijne et al. at Col. 1, lines 64-68. Therefore, docking the dough prepared according to the teachings of de Bruijne would defeat a requisite characteristic of such products, namely desired lift. Hence, no suggestion or motivation to combine exists within the prior art to produce a product where dough laminated with margarine is docked or punctured to prevent the dough from expanding or ballooning in the oven as taught in the present application. See Specification at page 9, lines 2-4. Accordingly, a prima facie case of obviousness has not been made.

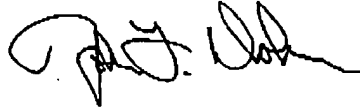
Additionally, the Paulucci patent does not suggest a laminated dough or crust "including margarine distributed between layers of dough" or "a plurality of margarine layers distributed between layers of a proofed dough product". It is noted that the Amendment and Declaration filed pursuant to 37 C.F.R. §1.132 filed on May 8, 2001, discussed the advantages of utilizing margarine rather than shortening flakes as disclosed in the Paulucci patent. Accordingly, the Paulucci patent fails to disclose the laminated pizza dough or crust of the present application and furthermore, provides no suggestion or motivation to combine its teachings with those of de Bruijne. Therefore, a prima facie case of obviousness has not been made.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

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The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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